



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,248	01/14/2004	Jimmie Earl DeWitt JR.	AUS920030544US1	6475

35525 7590 07/13/2006

IBM CORP (YA)  
C/O YEE & ASSOCIATES PC  
P.O. BOX 802333  
DALLAS, TX 75380

EXAMINER
----------

LAI, VINCENT

ART UNIT	PAPER NUMBER
----------	--------------

2181

DATE MAILED: 07/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Interview Summary</b>	Application No.	Applicant(s)	
	10/757,248	DEWITT ET AL.	
	Examiner	Art Unit	
	Vincent Lai	2181	

All participants (applicant, applicant's representative, PTO personnel):

- (1) Vincent Lai. (3) Francis Lammes.  
 (2) Fritz Fleming. (4) \_\_\_\_\_.

Date of Interview: 29 June 2006.

Type: a) ☒ Telephonic b) ☐ Video Conference  
 c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No.  
 If Yes, brief description: \_\_\_\_\_.

Claim(s) discussed: 1, 13 and 25.

Identification of prior art discussed: U.S. Patent # 5,887,159.

Agreement with respect to the claims f) ☐ was reached. g) ☒ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See attached.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

*Fritz Fleming*  
**FRITZ FLEMING**  
 SUPERVISORY PATENT EXAMINER  
 TECHNOLOGY CENTER 2100  
 7/7/2006

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

\_\_\_\_\_  
 Examiner's signature, if required

## Summary of Record of Interview Requirements

### Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

### Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews

#### Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

#### 37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,  
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

#### Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

***Interview Summary***

An interview was conducted on 29 June 2006 over the telephone with Vincent Lai, Fritz Fleming, and Francis Lammes present.

Attorney correctly pointed out objection to Drawings was incorrect and thus objection will now be withdrawn.

Interview focused on how the claims should be structured to overcome 35 U.S.C. 101 rejections. Submitted proposed amendment to claim 1 would mirror those of claims 13 and 25 in an attempt to overcome non-statutory status of claims. Discussed also was amendments to 13-24 to explicitly state computer programs were written on computer readable recordable-type media.

No agreement was made on the interpretation of the terms "indicator" and "hot spot." Further review of the interpretation will be done at a later time.

Please note that a copy of the facsimile received on June 22, 2006 will be appended to this interview summary.

Art Unit: 2181

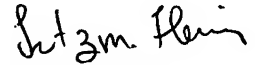
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vincent Lai whose telephone number is (571) 272-6749. The examiner can normally be reached on M-F 8:00-5:30 (First BiWeek Friday Off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fritz M. Fleming can be reached on (571) 272-4145. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Vincent Lai  
Examiner  
Art Unit 2181

vi  
June 29, 2006

  
FRITZ FLEMING  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100  
7/2/2006

**Yee &  
Associates, P.C.**

4100 Alpha Road  
Suite 1100  
Dallas, Texas 75244

Main No. (972) 385-8777  
Facsimile (972) 385-7766

## FACSIMILE COVER SHEET

To: Commissioner for Patents for Examiner Vincent Lai Group Art Unit 2181	Facsimile No. 571/273-6749
From: Michele Morrow Legal Assistant to Francis Lammes	No. of Pages Including Cover Sheet: 4
Enclosed herewith: <ul style="list-style-type: none"><li>• Applicant Initiated Interview Request Form (PTOL-413A); and</li><li>• Agenda for Telephone Interview.</li></ul>	
Re: Application Serial No. 10/757,248 Attorney Docket No. AUS920030544US1	
Date: Thursday, June 22, 2006	
<b>Please contact us at (972) 385-8777 if you do not receive all pages indicated above or experience any difficulty in receiving this facsimile.</b>	<i>This Facsimile is intended only for the use of the addressee and, if the addressee is a client or their agent, contains privileged and confidential information. If you are not the intended recipient of this facsimile, you have received this facsimile inadvertently and in error. Any review, dissemination, distribution, or copying is strictly prohibited. If you received this facsimile in error, please notify us by telephone and return the facsimile to us immediately.</i>

**PLEASE CONFIRM RECEIPT OF THIS TRANSMISSION BY  
FAXING A CONFIRMATION TO 972-385-7766.**

PTOL-413A (08-03)  
 Approved for use through 07/31/2006. OMB 0851-0031  
 U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

## Applicant Initiated Interview Request Form

Application No.: 10/757, 248 First Named Applicant: Jimmie Earl DeWitt, Jr.

Examiner: Vincent Lai Art Unit: 2181 Status of Application: 1<sup>st</sup> Office Action

### Tentative Participants:

(1) Francis Lammes - 55,353 (2) \_\_\_\_\_

Proposed Date of Interview: July 6, 2006 Proposed Time: 10:00 AM/PM  
 Central Time

### Type of Interview Requested:

(1) ☒ Telephonic (2) ☐ Personal (3) ☐ Video Conference

Exhibit To Be Shown or Demonstrated: ☐ YES ☒ NO

If yes, provide brief description: \_\_\_\_\_

## Issues To Be Discussed

Issues Claims/ (Rej., Obj., etc)	Claims/ Fig. #s	Prior Art	Discussed	Agreed	Not Agreed
(1) Obj	Fig. 2	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) 101 Rej.	1, 3, 7, 13, 15, 19, and 25	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) 101 Rej.	13-24	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(4) 103 Rej.	1, 13, and 25	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

☐ Continuation Sheet Attached

Brief Description of Arguments to be Presented: See attached

An interview was conducted on the above-identified application on \_\_\_\_\_

**NOTE:** This form should be completed by applicant and submitted to the examiner in advance of the interview (see MPEP § 713.01). This application will not be delayed from issue because of applicant's failure to submit a written record of this interview. Therefore, applicant is advised to file a statement of the substance of this interview (37 CFR 1.133(b)) as soon as possible.

Francis Lammes  
 (Applicant/Applicant's Representative Signature)

\_\_\_\_\_  
 (Examiner/SPE Signature)

Francis Lammes  
 Typed/Printed Name of Applicant or Representative

55,353  
 Registration Number, if applicable

This collection of information is required by 37 CFR 1.133. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 21 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comment on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application: DeWitt, Jr. et al.	§	
	§	
	§	
Serial No.: 10/757,248	§	Group Art Unit: 2181
	§	
Filed: January 14, 2004	§	Examiner: Lai, Vincent
	§	
For: Method and Apparatus for Counting	§	Attorney Docket No.: AUS920030544US1
Instruction Execution and Data Accesses	§	
to Identify Hot Spots	§	

**AGENDA FOR TELEPHONE INTERVIEW**

Sir:

I am requesting a telephone interview on July 6, 2006 at 10:00 am CT.

Please consider the following topics for discussion:

- Applicants would like to discuss the objection to the Drawings.
- Applicants would like to discuss appropriate amendments that would overcome the 101 rejection of claims 1, 3, 7, 13, 15, 19, and 25 and 13-24.
- Applicants would like to discuss the following **proposed** claim amendment:
  1. (Currently amended) A method in a data processing system for processing instructions, the method comprising:
    - responsive to receiving an instruction at a processor in the data processing system, determining whether an indicator is associated with the instruction, wherein the indicator identifies the instruction as one that is to be monitored by a performance monitor unit;
    - enabling counting, by the processor, of each event associated with execution of the instruction if the indicator is associated with the instruction, wherein the processor autonomically increments the count of the events associated with execution of the instruction in a hardware counter;
    - determining if the count of the events associated with the execution of the instruction stored in the hardware counter meets or exceeds a threshold; and
    - identifying a portion of code associated with the instruction as being a hot spot if the count of the events associated with the execution of the instruction in the hardware counter meets or exceeds the threshold, wherein identifying a portion of code associated with the instruction as being a hot spot comprises:
      - generating, in the processor, an interrupt; and
      - sending the interrupt to an interrupt handler of a performance monitoring application.

The Examiner is invited to call at the below-listed telephone number to confirm or reschedule the requested telephone interview.

Francis Lammes  
Reg. No. 55,353  
Yee & Associates, P.C.  
P.O. Box 802333  
Dallas, TX 75380  
(972) 385-8777  
Agent for Applicants